

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STEVEN EUGENE WELLS,

Civ. No. 07-1117-TC

Petitioner,

ORDER

v.

N. HOWTON, Superintendent,
Oregon State Correctional
Institution,

Respondent.

Aiken, Chief Judge:

Magistrate Judge Coffin issued his Findings and Recommendation in the above-captioned case on August 22, 2011. Magistrate Judge Coffin recommends that the petition for writ of habeas corpus be allowed in part and a new direct appeal be provided for petitioner, given the functional deprivation and ineffective assistance of appellate counsel. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and

Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Respondent timely filed objections to the Findings and Recommendation. Upon de novo review, I find no error and adopt the analysis contained in Magistrate Judge Coffin's opinion.

Given the unique and compelling facts of this case, I find no error in Magistrate Judge Coffin's finding that petitioner was, for all intents and purposes, functionally deprived of appellate counsel. Penson v. Ohio, 488 U.S. 75, 88-89 (1988). At minimum, petitioner received ineffective assistance of counsel on appeal, and given the absolute lack of effective representation and the issues that could have been raised, a reasonable probability exists that the outcome of petitioner's appeal would have been different. Strickland v. Washington, 466 U.S. 668, 694 (1984).

THEREFORE, IT IS HEREBY ORDERED that Magistrate Judge Coffin's Findings and Recommendation (doc. 73) filed August 22, 2011, is ADOPTED in its entirety. The Amended Petition for Writ of Habeas Corpus (doc. 18) is GRANTED, in that the State of Oregon shall provide petitioner with competent counsel and the opportunity for a new direct appeal.

IT IS SO ORDERED.

Dated this 29th day of November, 2011.


Ann Aiken
United States District Judge